

Consultation

**Office for
Students**



Consultation on publication of information about higher education providers

**This consultation runs from 15 December 2020
to 5 March 2021.**

Reference OfS 2020.64

Enquiries to regulation@officeforstudents.org.uk

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Consultation on publication of information about higher education providers

Since 2018, our focus has been on assessing providers seeking registration. We are now considering whether and how we should develop aspects of our approach to monitoring and intervention now that most providers are registered. We would like to hear your views on our proposals for the approach we should take to publishing information about individual providers.

Timing of consultation	Start: 15 December 2020 End: 5 March 2021
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Who should respond?	Anyone with an interest in the regulation of the higher education sector.
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How to respond	Please respond by 5 March 2021 Use the online response form available at survey.officeforstudents.org.uk/s/publicationofinformation/
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Enquiries	Email regulation@officeforstudents.org.uk Alternatively, call our regulation helpline on 0117 931 7305.
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The Office for Students is the independent regulator for higher education in England. We aim to ensure that every student, whatever their background, has a fulfilling experience of higher education that enriches their lives and careers.

Our four regulatory objectives

All students, from all backgrounds, and with the ability and desire to undertake higher education:

- are supported to access, succeed in, and progress from, higher education
- receive a high quality academic experience, and their interests are protected while they study or in the event of provider, campus or course closure
- are able to progress into employment or further study, and their qualifications hold their value over time
- receive value for money.

Contents

Contents	3
About this consultation	4
Who should respond to this consultation?	4
How to respond.....	5
Consultation principles	5
How we will treat your response.....	5
Next steps.....	5
Introduction.....	6
Our proposals	7
The issues	7
What are we proposing and why?	10
What would be the effect of these proposals?	13
What is the reasoning for these proposals?	13
Proposed implementation	14
Annex A: Consultation questions.....	15
Annex B: Information that we would normally expect to publish.....	16
Annex C: Factors we propose would normally be considered in reaching a decision to publish information about a provider or any type of person	21
Annex D: Consideration of alternative proposals	25
Annex E: Matters to which we have had regard in reaching our proposals	26
The OfS's general duties.....	26
The Regulators' Code	27
Guidance issued by the Secretary of State	27
The Public Sector Equality Duty.....	28
Annex F: Section 2 of the Higher Education and Research Act 2017	29

About this consultation

- In response to the coronavirus pandemic (COVID-19), we suspended some of our regulatory requirements while providers adapted rapidly to the changed environment¹. We now plan a phased resumption. However, we do not intend to reinstate our requirements exactly as before. Instead, we will draw on our experience of the last two years and target our work to ensure that it is focused where it is most needed. This revised approach will reflect the commitment we made in the regulatory framework that providers that do not pose specific increased risk should have less regulatory burden, now that the regulatory framework is established.
- As our regulatory focus moves from the initial registration of providers (since 2018, we have registered more than 400 providers) to the monitoring of registered providers in relation to our conditions of registration, we continue to develop our approach to monitoring and intervention. Alongside this consultation, we have published updated guidance² which explains in more operational detail how the approach to monitoring and intervention set out in the regulatory framework will work in practice. We are also consulting on our requirements for reportable events³ and our approach to monetary penalties⁴.
- In this consultation, we are seeking views on the approach we propose to take to the publication of information about particular providers and particular individuals connected with them.
- The consultation sets out the background to the proposals and the reasons for them. It constitutes our consultation for the purposes of section 75(8) of the Higher Education and Research Act 2017 (HERA). In formulating these proposals, we have had regard to our general duties in section 2 of HERA, as set out in Annex F; the Regulators' Code; statutory guidance issued by the Secretary of State; and the Public Sector Equality Duty.
- The consultation questions are listed in full in Annex A.

For more information about our approach to regulation, see the regulatory framework at www.officeforstudents.org.uk/advice-and-guidance/regulation/the-regulatory-framework-for-higher-education-in-england/.

Who should respond to this consultation?

- We welcome responses from anyone with an interest in the regulation of English higher education.
- We are particularly (but not only) interested in hearing from **students and their representatives, and higher education providers that are registered or applying for**

¹ See www.officeforstudents.org.uk/media/3147f6f5-e399-4bb0-b623-bb84f31534eb/covid-19-accountable-officer-letter-25-march.pdf.

² See www.officeforstudents.org.uk/publications/regulatory-advice-15-monitoring-and-intervention/.

³ See www.officeforstudents.org.uk/publications/consultation-on-reportable-events/.

⁴ See www.officeforstudents.org.uk/publications/consultation-on-ofs-approach-to-monetary-penalties/.

registration. These are the groups that may be most affected by our proposals. We welcome the views of all types and sizes of provider.

How to respond

The consultation closes at **2359 on 5 March 2021**.

Please submit your response by:

- Completing the online form at survey.officeforstudents.org.uk/s/publicationofinformation/
- If you require this document in an **alternative format**, or need assistance with the online form, please contact regulation@officeforstudents.org.uk. **Please note:** this email address should **not** be used for submitting your consultation response.

Consultation principles

- We are running this consultation in accordance with the government's consultation principles⁵.
- At the OfS we are committed to taking equality and diversity into account in everything we do. We have a legal obligation to have due regard to the Public Sector Equality Duty.

How we will treat your response

We will summarise and/or publish the responses to this consultation on the OfS website (and in alternative formats on request). This may include a list of the providers and organisations that respond, but not personal data such as individuals' names, addresses or other contact details. If you want the information that you provide to be treated as confidential, please tell us but be aware that we cannot guarantee confidentiality in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not be regarded by us as a confidentiality request.

The OfS will process any personal data received in accordance with all applicable data protection laws (see our privacy policy⁶).

We may need to disclose or publish information that you provide in the performance of our functions or disclose it to other organisations for the purposes of their functions. Information (including personal data) may also need to be disclosed in accordance with UK legislation (such as the Freedom of Information Act 2000, Data Protection Act 2018 and Environmental Information Regulations 2004).

Next steps

Subject to the representations received as a result of this consultation, we intend to make a decision on whether and how to take forward the proposals set out in the consultation in spring 2021.

⁵ See www.gov.uk/government/publications/consultation-principles-guidance

⁶ Available at www.officeforstudents.org.uk/ofs-privacy/

Introduction

1. The OfS's primary aim is to ensure that English higher education is delivering positive outcomes for students – past, present and future'. Our regulatory objectives reflect the things that matter most to students: high quality courses, successful outcomes, and the ongoing value of their qualifications. We use the tools in the regulatory framework to mitigate the risk that these regulatory outcomes are not delivered in practice for students from all backgrounds.
2. Our regulatory approach is designed to be predominantly principles-based. Requirements are expressed as broad principles rather than as narrow, prescriptive rules. This is because the higher education sector in England is complex and diverse. Imposing a narrow and entirely rules-based approach risks creating a compliance culture that stifles that diversity and discourages innovation, preventing the sector from flourishing. In October 2020, we published an Insight brief,⁷ which describes principles-based regulation in more detail and provides a discussion of the benefits and challenges of such an approach.
3. The OfS receives and generates information about the sector as a whole and about individual providers' performance and regulatory compliance. As it performs its functions, the OfS is required to have regard to the principles of best regulatory practice, including the principles that regulatory activities should be transparent and accountable. This means that we routinely consider whether it would be appropriate to publish such information, including information that an individual provider may prefer remained confidential.
4. There are some types of information that we would not expect to publish about a provider, but our general view, which we are testing in this consultation, is that it is necessary for us to publish information about our regulatory decisions. This is because we consider there to be a fundamental principle that our regulation should be transparent. It is a matter of strong public interest for the OfS's regulatory decisions, and the reasons these have been taken, to be visible. Visibility provides confidence in the regulatory system and this is in the interests of the public, of any current or potential students, and of other providers that have satisfied the OfS's regulatory requirements.
5. Our ability to publish information about an individual provider was tested and confirmed in October 2019 in the judgement of the High Court in *R (on the application of Barking & Dagenham College) v Office for Students* [2019] EWHC 2667 (Admin) which was subsequently endorsed by the Court of Appeal in *R (on the application of the Governing Body of X) v Ofsted* [2020] EWCA Civ 594. Of particular note is the Court's confirmation of the 'right of members of the public – in particular, existing and potential students of [a provider] – to receive information which OfS wishes to communicate to them in the exercise of its statutory functions'.

⁷ See OfS Insight brief – A Matter of principles: Regulating in the student interest, available at: www.officeforstudents.org.uk/publications/a-matter-of-principles-regulating-in-the-student-interest/

6. In this consultation, we are seeking views on our proposed general policy approach to the publication of information about particular providers, and particular individuals connected with them, where that information is relevant to our regulation of higher education providers.⁸
7. The intended effect of these proposals is to establish the OfS's general policy approach to the publication of information about particular providers and particular individuals connected to them, and to provide greater transparency about the types of information the OfS would be likely to publish and the factors to which it would normally expect to have regard in making publication decisions. We consider that these proposals are a necessary and proportionate way to ensure that we are able to publish information about higher education providers, and relevant individuals, where we consider this to be in the public interest, and to do so in a way that meets our public law obligations for a fair decision-making process.
8. The current consultation does not contain proposals in relation to the publication of data and analysis about particular providers, or particular individuals connected to them, where this is not part of a regulatory decision set out in Table 1 in Annex B. This is because we plan to consult on a revised data strategy in 2021 and would expect to set out proposals in relation to the publication of data and analysis at the same time. We expect this to include the way in which we propose to have regard to the Code of Practice for statistics in our approach to publication.
9. In developing this consultation, we have considered alternative options for securing our objectives. These options, and the reasons why we do not propose to take them forward, are set out in Annex D.

Our proposals

The issues

10. Through our registration and monitoring and intervention work, we make regulatory decisions about individual providers. We also make decisions that may affect individuals connected with a provider (for example, its accountable officer or members of its governing body). These decisions will have varying degrees of impact on a provider and individuals. For example, a decision to refuse registration for a provider, or to impose a monetary penalty on a registered provider, is likely to have a significant impact on that provider and its current students and staff.
11. The OfS is required⁹ to publish certain information about individual providers as follows:
 - a. A decision to register a provider.

⁸ This consultation therefore focuses on the publication of information which identifies particular legal or natural persons, such as where a legal entity or human person is expressly mentioned by name. Given that information disclosed in response to requests made under the Freedom of Information Act 2000 (FOIA) are normally regarded as a disclosure to the world at large, if implemented, we would also expect to apply our proposed policy approach on a case-by-case basis when considering responses to FOIA requests that relate to relevant subject matter and when considering whether there are grounds for relying on relevant FOIA exemptions.

⁹ In making such publication decisions, we have regard to various factors, including our general duties set out in section 2 of HERA.

- b. Information about each registered provider, **on the face of the Register**:¹⁰
- i. The provider's name, contact details and website address.
 - ii. The category in which the provider is registered ('Approved' or 'Approved (fee cap)').
 - iii. The fee limits that apply to the provider.¹¹
 - iv. A link to the provider's OfS-approved access and participation plan (on the provider's website), where it has such a plan in place, as well as details of the period during which the plan is in force.
 - v. Information about whether the provider is authorised to grant taught awards or research awards¹² (and the type of degree awarding powers that it has and, if relevant, the period for which those powers have been granted).
 - vi. Any variation that the OfS makes to the provider's authorisation to grant degrees, together with the reason for and effective date of this variation.
 - vii. Whether the provider has the right to use 'university' or 'university college' in its title and, if so, when and how the right was awarded.
 - viii. Whether awards granted by the provider have been designated as 'recognised awards' under section 214(2)(c) of the Education Reform Act 1988.
 - ix. An indication that the provider has entered into validation arrangements¹³, where it has done so.
- c. Section 16 of HERA requires the Register to state that a provider's registration is suspended, during any suspension, and to show the limits, and end date for that suspension, where it is known.
- d. A list of providers¹⁴ that have been deregistered (including through voluntary deregistration), including information about any transitional provisions applying to each provider which mean that it is treated as still being registered for certain specific purposes. For example, to enable eligible existing students to continue to access student support funding for the remainder of their courses.

¹⁰ Regulations made under section 3(6) of HERA set out the information that must be contained in a provider's entry in the OfS Register. The Regulations are available at: www.legislation.gov.uk/uksi/2017/1196/pdfs/ukxi_20171196_en.pdf.

¹¹ Section 11 of HERA requires the OfS to publish annually a list of registered providers that have a fee limit condition and the level of that limit.

¹² 'Taught awards or research awards' are as defined in section 42(3) of HERA.

¹³ Where a provider delivers one or more courses leading to an award by another provider, under a validation arrangement. Students are registered students of the delivery provider.

¹⁴ Sections 18 and 22 of HERA. Specifically, transitional or saving provisions may be imposed under sections 18(5) and 22(5)

12. Beyond these requirements, the OfS does not have a duty to publish information about an individual provider but may if it considers that there is a public interest in doing so. The regulatory framework says that we would expect to publish the following information about providers on the Register:
- a. Information about the provider's legal form and whether it is an 'exempt charity'¹⁵ or registered charity, and a link to information about the provider's charitable status on its website.
 - b. The provider's unique identifier (UKPRN) assigned by the UK Register of Learning Providers.
 - c. A link to the provider's primary regulator where this is not the OfS (for example, the Education and Skills Funding Agency (ESFA) for further education and sixth form colleges).
 - d. A link to the provider's entry on the Home Office's Register of licensed sponsors, where the provider holds a Tier 4 sponsor licence to recruit international students.
 - e. A link to the provider's entry on the Unistats¹⁶ website.
 - f. Information about the provider's sub-contractual arrangements¹⁷ and, where the provider is the lead provider, information about which providers deliver its courses under sub-contractual arrangements.
 - g. A link to the provider's access and participation statement (on the provider's website), where it has one in place.
 - h. Where the provider is accredited by the Department for Education to deliver initial teacher training courses for which student support funding is available, confirmation that this is the case.
 - i. Where the OfS has determined that access to student support funding should be determined on a course-by-course basis, a list of the provider's courses that have been approved for that purpose.
 - j. The outcome of any assessment of quality and standards undertaken by the designated quality body¹⁸.

¹⁵ An exempt charity is exempt from registration with and direct regulation by the Charity Commission. The OfS is the principal regulator for registered providers that are exempt charities, and for exempt charities that are closely connected with them.

¹⁶ This is now Discover Uni discoveruni.gov.uk/.

¹⁷ Under a sub-contractual arrangement, a lead provider may subcontract teaching of some or all of a course to a delivery provider. Students are registered students of the lead provider and remain its responsibility.

¹⁸ The designated quality body is an organisation designated by the Secretary of State under paragraph 3 of schedule 4 of HERA. The Quality Assurance Agency for Higher Education is currently the designated quality body.

- k. Whether the provider is eligible to take part in the Teaching Excellence and Student Outcomes Framework (TEF) and the provider's current TEF rating.
 - l. The general ongoing conditions of registration that apply to the provider together with information that shows any current breach of any of those conditions.
 - m. A specific ongoing condition of registration imposed on the provider, together with an explanation of the reasons for its application, unless the OfS considers it inappropriate to do so.
 - n. A sanction imposed on a registered provider (a monetary penalty, suspension of registration, or deregistration) in most circumstances.
 - o. Where the OfS revokes a provider's degree awarding powers, the timing and reasons for that revocation. Where the provider is deregistered after that revocation, information about the revocation will be retained in the OfS's historic records.
 - p. Where the OfS revokes a provider's authorisation to use 'university' or 'university college' in its title, the timing and reasons for that revocation. Where the provider is deregistered after that revocation, information about the revocation will be retained in the OfS's historic records.
13. We have also published, on a case-by-case basis, other types of information about providers, including the following:
- a. A decision to refuse registration for a provider and the reasons for this.
 - b. Data and analysis about individual providers, including in the form of official statistics and on the Discover Uni website.¹⁹
14. This means that we have made case-by-case decisions about whether to publish information about a provider and what should be published. In reaching such a decision we have regard to our general duties set out in section 2 of HERA, including to the principles of best regulatory practice, including the principles that regulatory activities should be transparent, accountable, proportionate and consistent. We seek a provider's views about publication before we publish in circumstances where we consider that publication may harm a provider's interests.

What are we proposing and why?

Proposal 1: Information we would normally expect to publish

15. We have set out in Table 1 in Annex B a proposed list of the information we would normally expect to publish. We would normally expect to publish such information unless we decide to make exceptions based on our consideration of relevant factors. This is because we consider there to be a strong public interest in publishing such information.
16. The information listed in Table 1 of Annex B relates to the following categories:

¹⁹ This consultation does not contain proposals in relation to the publication of data and analysis about particular providers, or particular individuals connected to them, where this is not part of a regulatory decision set out in Table 1 in Annex B.

- a. Information set out in paragraph 11 above because we have a duty to publish it, and we consider publication to be consistent with our general duties.
- b. Information about a decision to refuse registration for a provider.
- c. Information about a provider's compliance with its conditions of registration and any action the OfS has taken in response to non-compliance.
- d. Other information listed in the regulatory framework as set out in paragraph 12 above.²⁰

17. Where we consider it necessary to publish information of the types set out in Table 1 of Annex B that relates to particular individuals connected to a provider, we would propose to do so.

Proposal 2: Information we would not normally expect to publish

18. We propose that we would not normally expect to publish certain information, unless we decide to make exceptions based on our consideration of relevant factors. This is because we consider that other factors may, in general terms, outweigh the public interest in publishing such information.

19. The information that we would not normally expect to publish is:

- a. Our risk profile for a provider. At registration, the OfS assesses for each provider the risk of a future breach of each ongoing condition of registration. This assessment forms the basis of a 'risk profile' for each provider and this profile is updated through our monitoring of the provider against its conditions of registration. A risk profile is not equivalent to a regulatory judgement.
- b. Enhanced monitoring requirements imposed on a provider. We have recently signalled our intention to minimise our use of enhanced monitoring requirements now that the initial registration process is largely complete. We have published guidance which explains the more limited circumstances in which we may now decide to impose enhanced monitoring requirements.²¹
- c. Information provided to us by third parties through our notifications process, such as students or whistle blowers, except in anonymised form where this is relevant to a publication we would expect to make as a result of Proposal 1.

²⁰ In the event that we make a final decision to adopt our policy proposals and consider there to be any elements that could be considered to be inconsistent with the current content of the regulatory framework, we intend to make consequential changes to the regulatory framework without further consultation, i.e. to align the regulatory framework with the policy position we have decided to adopt as a result of this consultation. This consultation should therefore be considered as constituting a statutory consultation under section 75 of the Higher Education and Research Act 2017. It follows that anyone wishing to respond to this consultation is free to comment on whether any such inconsistencies may exist and should be addressed.

²¹ See Regulatory Advice 15: Guidance on monitoring and intervention, available at www.officeforstudents.org.uk/publications/regulatory-advice-15-monitoring-and-intervention/.

- d. Information about an investigation²² into any type of potential non-compliance with a condition of registration, except where this is relevant to a publication we would expect to make as a result of Proposal 1.

Proposal 3: Factors to which we would normally expect to have regard in making publication decisions

20. The factors to which we would normally expect to have regard are set out in Annex C. The proposed factors relate to the interests of students, the public, and providers and we envisage that these will be used in our consideration of:
- a. Whether to make exceptions to our general policies on publishing, or not publishing, information about a particular subject matter.
 - b. Whether or not to publish information on a subject matter that is not covered by our general policies.
 - c. What information relating to a particular subject matter will be included in publications.
21. We propose that, where we do decide to publish information about a particular registered provider or particular individual connected to that provider, we would consider the most appropriate mechanism for publication. Factual information about a provider and its regulatory status would, as now, be likely to be published on the Register. We may also decide to publish information in other places such as on our website, as a case study with or without other case studies, or through a press release.
22. Where we propose to publish information about a subject matter, we will consider how much detail should be published, and whether any related or ancillary material should be included. For example, we would consider whether to take one or more of the following approaches:
- a. Publication of the bare facts of a regulatory outcome – for example, ‘Provider x has breached ongoing condition of registration y and a monetary penalty of £z has been imposed’.
 - b. Publication of a brief summary of the reasons for a regulatory outcome – for example, ‘Provider x has been refused registration because it failed to satisfy initial conditions of registration y and z. The reasons the OfS judged that initial condition y is not satisfied is because a, b and c’.
 - c. Publication of a full account of the issues considered by the OfS and the reasons for its decision – for example, ‘The OfS investigated complaints made about x in relation to Provider y and concluded z. Our investigatory report can be found here’.
23. Table 1 in Annex B sets out the main content that we would consider publishing in relation to a particular subject matter, and any related or ancillary material that would be part of that consideration.

²² Investigation in this context means a formal investigation into any type of potential non-compliance with a condition of registration initiated by a person authorised to do so under the OfS’s scheme of delegation.

What would be the effect of these proposals?

24. These proposals would, if implemented, result in the adoption and publication of a general policy about the OfS's approach to the publication of information about particular providers and particular individuals. That policy would therefore provide transparency and clarity about the type of regulatory decisions, and other information, that the OfS would normally expect to publish, or not publish, about such persons. It would provide transparency and clarity about some of the factors to which the OfS would normally expect to have regard when considering whether to depart from this general policy position.²³
25. More generally, the proposals are likely to result in increased transparency about the OfS's regulatory activities and decisions, for students and other stakeholders. Publication of a policy would assist students and members of the public in understanding the information that is likely to be available about the regulation of higher education providers in England.

What is the reasoning for these proposals?

26. There are some types of information that we would not normally expect to publish about a particular provider, or particular individuals connected with a provider, but our general view is that it is necessary for us to publish information about providers and our regulatory decisions. This is important because as a regulator there is a fundamental principle of transparency about our regulation and decision making that would support publication. It is a matter of strong public interest for the outcomes of the OfS's regulatory decisions and the reasons these have been taken to be visible. This visibility provides confidence in the regulatory system and this is in the interests of the public, of any potential students, and of other providers that have satisfied the OfS's regulatory requirements. Publication can help to inform students' decisions about what and where to study. It is also an important regulatory tool because it allows us to draw attention to providers' performance and incentivise compliance across the sector by raising awareness of the issues identified. This can also mean that we do not have to take other more direct and intrusive regulatory action to achieve compliance. Withholding publication of information and regulatory decisions, and the reasons these have been taken, would affect the right of members of the public, including any potential future students, to receive information which the OfS wishes to communicate to them in the exercise of its statutory functions.
27. Nevertheless, there will be circumstances where it would be inappropriate for the OfS to publish information about a provider and regulatory decisions relating to that provider. For example, we noted in the regulatory framework that we do not intend to publish our risk assessments or the risk profile for an individual provider and that approach is reflected in these proposals. Such information could be erroneously treated as equivalent to judgements on a provider's performance and quality and could have an unintended negative impact on a provider.
28. We have considered, in particular, whether it would normally be appropriate to publish information about an investigation²⁴ into any type of potential non-compliance with a condition

²³ For the avoidance of doubt, this should not be taken as suggesting that the OfS will not have regard to other relevant factors on a case-by-case basis.

²⁴ Investigation in this context means a formal investigation into any type of potential non-compliance with a condition of registration initiated by a person authorised to do so under the OfS's scheme of delegation.

of registration. We believe this issue to be finely balanced because the normal purpose of an investigation is to consider whether there is evidence of suspected wrongdoing and revealing the existence of an investigation may result in public misunderstandings or speculation about whether wrongdoing has taken place. However, we also consider there will be circumstances where there is a strong public interest in publishing information about the existence of an investigation, for example, where that may be the most effective way of gathering important evidence, such as by encouraging whistle blowers or witnesses to come forward. Therefore, while our policy proposals would mean that we would not normally expect to publish information about investigations (including where they are ongoing), we would always have the discretion to depart from that general policy position in circumstances where there are good reasons to do so. To facilitate making such exceptions in the exercise of our discretion, our proposals are ultimately designed to help the OfS to balance a number of factors when considering whether publication is appropriate in a particular set of circumstances.

Proposed implementation

29. Subject to the representations received as a result of this consultation, we intend to make a decision in spring 2021 and to implement any resulting approach at that point.

Annex A: Consultation questions

Question 1: Do you have any comments about the proposal for the information we would normally expect to publish?

Question 2: Do you have any comments about the proposal for the information we would not normally expect to publish?

Question 3: Do you have any comments about the factors we propose to consider in reaching decisions about the publication of information? Are there any additional factors we should take into account, or factors we should not take into account?

Question 4: Do you have any comments about any unintended consequences of these proposals, for example, for particular types of provider or course or for any particular types of student?

Question 5: Do you have any comments about the potential impact of these proposals on individuals on the basis of their protected characteristics?

Question 6: Do you have any other comments?

Annex B: Information that we would normally expect to publish

1. We would normally expect to publish information on the subject matter set out in Table 1. In relation to the subject matter in Table 1, we propose to use the proposed factors set out in Annex C in our consideration of:
 - a. Whether to make an exception to our general policy to publish information about a particular subject matter.
 - b. What information relating to a particular subject matter will be included in a publication, in particular, whether to publish some or all of the related or ancillary material listed in the final column of Table 1.

Table 1: Information the OfS would expect to publish

	Main subject matter	Main content in respect of that subject matter	Any related or ancillary material
1	A decision to register a provider	Publication of the provider's entry in the Register and, in addition: Any final decision to impose a specific condition of registration (see row x below)	The report of any assessment of quality and standards undertaken for the provider by the DQB. ²⁵
2	The information listed in Regulations made under section 3(6) of HERA. ²⁶	Publication in a provider's entry in the Register of the information listed in the Regulations	N/A
3	A decision to refuse registration for a provider.	The refusal decision and the reasons for that decision.	A summary of the reasons that one or more initial conditions of registration have not been satisfied. The report of any assessment of quality and standards undertaken for the provider by the DQB, whether not the OfS

²⁵ The designated quality body is an organisation designated by the Secretary of State under paragraph 3 of schedule 4 of HERA. The Quality Assurance Agency for Higher Education is currently the designated quality body

²⁶ The Regulations are available at: www.legislation.gov.uk/ukxi/2017/1196/pdfs/ukxi_20171196_en.pdf.

	Main subject matter	Main content in respect of that subject matter	Any related or ancillary material
			<p>has decided that initial conditions relating to quality and standards have been satisfied.</p> <p>The OfS's detailed assessment of a provider's application for registration, including the underlying evidence considered in that assessment.</p>
4	<p>Information about a provider's compliance with its conditions of registration and any action the OfS has taken in response to actual or likely non-compliance:</p> <p>A breach of a condition of registration</p> <p>Imposition of a specific condition or registration, whether or not there has been a breach of a condition</p> <p>Imposition of a monetary penalty</p> <p>Suspension of registration</p> <p>Deregistration</p>	<p>The decision that there is or has been a breach of a condition or registration and the reasons for that decision.</p> <p>The content of any specific condition and the reasons it has been imposed.</p> <p>The decision to impose a monetary penalty, the amount of that penalty (and how it was calculated), and the reasons for those decisions.²⁷</p> <p>The information about suspension of registration listed in section 16 of HERA and the reasons for that suspension.</p> <p>The information about deregistration listed in section 18 of HERA and the reasons for that deregistration, and the reasons for the imposition of any transitional or saving provision</p>	<p>The OfS's detailed assessment of a provider's compliance with the relevant condition(s) of registration, including the underlying evidence considered in that assessment.</p> <p>The report of any assessment of quality and standards undertaken for the provider by the DQB, where that is relevant to the main subject matter.</p>

²⁷ See www.officeforstudents.org.uk/publications/consultation-on-ofs-approach-to-monetary-penalties/.

	Main subject matter	Main content in respect of that subject matter	Any related or ancillary material
6	<p>Information that relates to individuals connected with a provider:</p> <p>A finding that an individual is not suitable to be approved as a provider's accountable officer</p> <p>A finding that an individual is not a fit and proper person</p> <p>The conduct of an individual where this is relevant to the reasons for a regulatory finding about a provider, including a breach of a condition</p>	The decision about an individual and the reasons for that decision.	The OfS's detailed assessment of the relevant issues, including the underlying evidence considered in that assessment.
7	The information about voluntary deregistration listed in section 22 of HERA	As listed in section 22 of HERA and the reasons for the imposition of any transitional or saving provision	
8	<p>Information about a provider's authorisation for degree awarding powers:</p> <p>A decision to grant an application for an authorisation for a provider</p> <p>A decision to refuse an application for an authorisation for a provider</p> <p>A decision to vary a provider's authorisation to restrict its scope</p> <p>A decision to revoke a provider's authorisation</p>	<p>Publication in a provider's entry in the Register of the information listed in the Regulations and, in addition:</p> <p>The type of authorisation granted to a provider.</p> <p>The decision to refuse an application for an authorisation and the reasons for that decision.</p> <p>The decision to restrict an authorisation and the reasons for that decision</p> <p>The decision to revoke a provider's authorisation and the reasons for that decision</p>	<p>The OfS's detailed assessment of a provider's authorisation, including the underlying evidence considered in that assessment.</p> <p>The report of any assessment of quality and standards undertaken for the provider by the DQB, where that is relevant to the main subject matter</p>
9	Information about a provider's authorisation to use the term 'university' in its title:	Publication in a provider's entry in the Register the information listed in the Regulations and, in addition:	The OfS's detailed assessment of a provider's authorisation, including the

	Main subject matter	Main content in respect of that subject matter	Any related or ancillary material
	<p>A decision to authorise the use of the term 'university'</p> <p>A decision to refuse to authorise the use of the term 'university'</p> <p>A decision to revoke authorisation for the use of the term 'university'</p>	<p>The decision to refuse an application for an authorisation and the reasons for that decision.</p> <p>The decision to revoke a provider's authorisation and the reasons for that decision.</p>	underlying evidence considered in that assessment.
12	<p>Other information to be published in the provider's entry on the Register as listed in the table at paragraph 72 of the regulatory framework, and not covered by the preceding rows in this table:</p> <p>The provider's unique identifier (UKPRN) assigned by the UK Register of Learning Providers.</p> <p>Information about the provider's legal form and whether it is an 'exempt charity'²⁸ or registered charity.</p> <p>The general ongoing conditions of registration that apply to the provider.</p> <p>Information about the provider's primary regulator where this is not the OfS (for example, the Education and Skills Funding Agency (ESFA) for further education and sixth from colleges).</p> <p>Where the provider holds a Home Office Tier 4 sponsor licence to recruit international students, confirmation that this is the case.</p> <p>A link to the provider's entry on the Discover Uni²⁹ website.</p>	N/A	N/A

²⁸ An exempt charity is exempt from registration with and direct regulation by the Charity Commission. The OfS is the principal regulator for registered providers that are exempt charities, and for exempt charities that are closely connected with them.

²⁹ The regulatory framework currently refers to this as 'Unistats'.

	Main subject matter	Main content in respect of that subject matter	Any related or ancillary material
	<p>Information about the provider's sub-contractual arrangements³⁰ and, where the provider is the lead provider, information about which providers deliver its courses under sub-contractual arrangements.</p> <p>A link to the provider's access and participation statement (on the provider's website), where it has one in place.</p> <p>Where the provider is accredited by the Department for Education to deliver initial teacher training courses for which student support funding is available, confirmation that this is the case.</p> <p>Whether the provider is eligible to take part in the Teaching Excellence and Student Outcomes Framework (TEF) and the provider's current TEF rating.</p>		

³⁰ Under a sub-contractual arrangement, a lead provider may subcontract teaching of some or all of a course to a delivery provider. Students are registered students of the lead provider and remain its responsibility.

Annex C: Factors we propose would normally be considered in reaching a decision to publish information about a provider or any type of person

1. The factors to which we would normally expect to have regard are set out below and we envisage that these will be used in our consideration of:
 - a. Whether to make exceptions to our general policies on publishing, or not publishing, information about a particular subject matter.
 - b. Whether or not to publish information on a subject matter that is not covered by our general policies.
 - c. What information relating to a particular subject matter will be included in publications.
2. In reaching a decision about whether to publish information about a provider, and what should be published, the OfS is required to have regard to the following factors which include:³¹
 - a. Our general duties set out in section 2 of HERA. We will identify the duties that are particularly relevant in an individual case and would expect that some of the duties are generally likely to be relevant for publication decisions. These include the need to have regard to the autonomy of higher education providers, the promotion of quality, choice and opportunities for students, as well as principles that regulatory activities should be transparent and accountable.
 - b. The Public Sector Equality Duty.
 - c. Guidance issued by the Secretary of State pursuant to section 2(3) of HERA.
3. In addition, we propose that we would normally have regard to the factors set out below.³² Such factors will therefore be used to both determine whether information about a particular subject matter should be published and, if so, the particular contents of such publications.³³ It follows, for example, that the factors may result in the OfS including content in publications that seek to address risks of potential misunderstandings or unintended consequences that could stem from a particular subject matter. The factors that we consider are likely to be relevant include:
 - a. Principles from relevant legal cases or judgments insofar as they remain good law. For example, we currently consider the judgment of the High Court in *R (on the application of Barking & Dagenham College) v Office for Students* [2019] EWHC 2667 (Admin) to be a particularly relevant judgment, particularly following the endorsement by the Court

³¹ The legal requirements listed are not intended as an exhaustive list and therefore the OfS will consider whether there are other legal requirements and principles of law which may be relevant on a case-by-case basis.

³² While we have listed particular factors in this document, this is not intended as an exhaustive list and therefore the OfS will have regard to other relevant factors on a case-by-case basis.

³³ Where relevant, we would also normally expect to have regard to these factors when considering the timing of publications.

of Appeal in *R (on the application of the Governing Body of X) v Ofsted* [2020] EWCA Civ 594.

b. **The student interest.** We will normally expect to consider the impact of publication on current, past and future students of the provider, and the impact of publication on students more broadly. Factors in favour of publication may include:

- i. Publication provides prospective students with more information, enabling them to understand the value of the course and provider they are considering and make an informed choice about what and where they study.
- ii. Publication provides current students with more information about their provider and its performance, enabling them to understand the value of their course and provider and make an informed choice about whether to continue studying with that provider.
- iii. OfS regulation helps to promote quality in higher education. Providing clear information about providers reinforces this.
- iv. Publication also signals to students, and others, the types of information we would be able to act upon if it is submitted to us.

Factors against publication may include:

- v. Publication may result in prospective students deciding not to study with that provider and this could result in the course or provider no longer being viable and mean that current students may not be able to complete their course with that provider.
- vi. Publication may result in prospective or current students deciding not to study with that provider and this could result in the course or provider no longer being viable and that could reduce choice for future students.
- vii. Publication may result in a third party taking action in relation to that provider and this could result in the course or provider no longer being viable and mean that current students may not be able to complete their course with that provider.
- viii. Publication could damage the reputation of the course or provider and this could mean that the qualifications held by past students could be undermined.

c. **The public interest.** We will consider the impact of publication on our ability to regulate effectively in the public interest. Factors in favour of publication may include:

- i. There is a general public interest for regulators to be transparent about decisions they take about those they regulate.
- ii. Publication may encourage staff, students and members of the public to come forward to provide the information about that provider, or other providers, that supports the OfS's registration, monitoring and investigatory activity.

- iii. Publication may enable the OfS to regulate in a way that is proportionate and cost effective because it may encourage staff, students and members of the public to come forward to provide the information about that provider, or other providers.

Factors against publication may include:

- iv. Publication of specific details may limit the ability of the OfS to perform its functions effectively, for example, by reducing the likelihood of providers reporting regulatory risk. Publication may limit the ability of the OfS to address issues in a way that limits the costs to providers, the OfS, students and the public.
 - v. Where there are credible risks that specific details could compromise confidential sources of intelligence and evidence about potential wrongdoing, for example, through publishing information that could potentially reveal the identity of members of staff at providers or third parties who have decided to 'blow the whistle' on suspected wrongdoing.
 - vi. Where there are credible risks of prejudicing investigatory or compliance activities of the OfS or other regulatory or enforcement bodies, for example, where the timing of publication could lead to evidence being concealed or destroyed.
 - vii. Where there are genuine questions about the accuracy or reliability of information.
 - viii. Where specific details could be considered to be commercially confidential information of a nature whereby publication (or other forms of disclosure) would be likely to give rise to actual or potential competition law concerns.
- d. **The provider interest.** We will consider the impact of publication on the provider concerned and on its owners and staff. We will also consider the impact on other providers. Factors in favour of publication may include:
- i. Publication signals to other providers issues that are of concern to the OfS and that encourages compliance.
 - ii. Publication demonstrates to providers that are compliant that action is taken in relation to providers that are not compliant.
 - iii. Publication of the reasons for a decision about a provider may have a more positive effect than would be the case if no explanation of a negative decision were published.

Factors against publication may include:

- iv. Publication may damage the provider's legitimate commercial interests if it generated adverse publicity or would create a competitive advantage for other providers.

- v. Publication may damage the legitimate commercial interests of the owners of a provider if it generated adverse publicity or would create a competitive advantage for other providers.
- vi. Publication may damage the interests of a provider's staff if prospective or current students decide not to study with that provider and this could result in the course or provider no longer being viable and that could put employment at risk.

Annex D: Consideration of alternative proposals

1. In formulating the proposals in this consultation, we have considered alternative approaches. These are summarised below.
2. We have considered whether it is necessary to make any changes at all to our approach to the publication of information about individual providers and whether we could instead continue to make publication decisions on a case-by-case basis. Our view is that this approach would be reasonable, but there are benefits to increased transparency about the types of information we are likely to consider publishing and the factors we will take into account in reaching individual decisions.
3. Setting out the factors we will take into account also means that providers will be better informed about the issues that we consider particularly relevant to publication decisions and this will improve their ability to make relevant representations about proposals to publish information.
4. We are mindful of the context within which higher education providers are currently operating because of the coronavirus pandemic. We have made clear our commitment to reducing regulatory burden and supporting providers in the interests of students during this period.³⁴ This has included limiting the number of consultations and requests for information to which providers are subject. We wrote to providers in July 2020 setting out our intention to move back to more normal regulatory activity and signalled that we expected to consult on our approach to the publication of information about individual providers. The current proposals are designed to provide clarity to providers about our approach and our view is therefore that it would not be helpful to return to a more normal regulatory environment without resolving these issues.

³⁴ See our letter of 25 March 2020: www.officeforstudents.org.uk/publications/regulatory-requirements-during-the-coronavirus-covid-19-pandemic/

Annex E: Matters to which we have had regard in reaching our proposals

The OfS's general duties

1. In formulating these proposals, the OfS has had regard to its general duties as set out in section 2 of HERA – these are reproduced in Annex F. We consider that the proposals in this consultation are particularly relevant to general duties (a), (b), (c), (d) and (g), which relate to institutional autonomy; quality, choice and opportunities for students; competition where this is in the interests of students; value for money; and best regulatory practice.
2. In formulating these proposals, we have given particular weight to (b), (c), (d) and (g): quality, choice and opportunities for students; competition where this is in the interests of students; value for money; and best regulatory practice.
3. We have considered the principles of best regulatory practice and, in particular, considerations of transparency, accountability and proportionality. The proposals in this consultation are designed to ensure that the OfS's regulatory approach and the way this is applied to individual providers is transparent and accountable. We consider that there is a strong public interest in publishing information about a provider where we judge that there is a public interest in doing so. We consider the proposed approach set out in this consultation to be proportionate and appropriate in ensuring that the OfS can make decisions about publication for individual providers on a consistent and transparent basis.
4. We have considered the need to promote greater choice and opportunities for students. The publication of information about individual providers is necessary to support informed choice by students about what and where they wish to study. This is the case whether that information presents a positive or negative view of a provider.
5. The OfS is required to have regard to the need to encourage competition, where that competition is in the interests of students and employers. Competition could be encouraged by removing regulatory barriers such that any provider is able to compete for students, regardless of the regulator's view of that provider. However, our view is that such competition would not be in the interests of students because they are not generally sophisticated consumers able to make unaided choices about what and where to study. This is particularly the case for students from underrepresented groups, or with protected characteristics, who may not have access to the information, advice and guidance needed to make the right choice for them. The role of the regulator in this context is to ensure that reliable and relevant information is published and available to ensure that students are able to choose from a variety of providers and courses that meet that meet their needs.
6. Value for money in the provision of higher education is important for both students and the taxpayer. Students normally pay significant sums for their higher education and incur debt for tuition fees and maintenance costs whether or not the course is high quality. Investing in a higher education course without access to information that would allow a student to make judgements about value for money would not be appropriate. Similarly, the taxpayer contributes significantly to higher education through the provision of government-backed student loans and, for some providers, public grant funding. Transparency about individual

providers in return for this investment is an important component of value for money. To protect the interests of students and taxpayers, our provisional judgement is that it is necessary and appropriate to publish information in the way described in this consultation.

7. In formulating these proposals, we consider general duty (a) important, but have given less weight to this.
8. The OfS is required to have regard to the need to protect institutional autonomy. It does not, however, have an absolute obligation to protect the autonomy of providers. Our proposals take a principles-based approach to making decisions about publication decisions because using rigid rules-based mechanisms would not allow us to make decisions about publication that take account of a provider's particular context. We are therefore giving weight to autonomy insofar as this is consistent with the need for the OfS to be able to publish information it considers necessary to protect the public interest and the interests of students.

The Regulators' Code

9. We have had regard to the Regulators' Code and our view is that the following sections are particularly relevant:
 - a. Section 1 which emphasises the importance of regulators avoiding unnecessary regulatory burdens through their regulatory activities and choosing proportionate approaches to those they regulate. Publication of information incentivises compliance from all providers and therefore reduces the need for more intrusive regulatory action.
 - b. Section 2 which discusses the importance of regulators providing simple and straightforward ways to engage with those they regulate, to offer views and contribute to the development of their policies.
 - c. Section 6 which discusses the need for regulators to ensure that their approach to their regulatory activities is transparent.

Guidance issued by the Secretary of State

10. We have had regard to guidance issued to the OfS by the Secretary of State under section 2(3) of HERA, and specifically the following guidance:³⁵
 - a. Strategic guidance to the OfS – Priorities for financial year 2018-19 (20 February 2018)
 - b. Strategic guidance to the OfS: Priorities for financial year 2019-20' (27 February 2019).
 - c. Supplementary strategic guidance to the OfS (16 September 2019).
 - d. Strategic guidance to the OfS - additional teaching grant and funding/reducing the bureaucratic burden on providers (24 September 2020).
11. We have specifically had regard to the emphasis here on the importance of transparency; for example, the Minister of State's comments in the strategic guidance of February 2018 about

³⁵ All guidance cited is available at www.officeforstudents.org.uk/advice-and-guidance/regulation/guidance-from-government/

the OfS ‘paying close attention to the elements of the regulatory framework that will deliver transparency, accountability and consequently drive better value for money...’. We have also had regard to the Secretary of State’s comments in the Strategic guidance to the OfS: Priorities for financial year 2019-20 (27 February 2019) that ‘Transparency is key to ensuring justification and accountability’ (referring specifically to the publication of senior staff remuneration data and analysis). In addition, we have had regard to the Secretary of State’s comments in the Supplementary strategic guidance to the OfS (16 September 2019) about the importance of OfS work in supporting students as ‘empowered consumers’ and that students must be able to ‘make their choices based on clear, comparable, and relevant information about what is being offered’.

12. We have also had regard to the Minister of State’s comments in her strategic guidance of September 2020 that ‘I would like to see immediate progress...to reduce unnecessary bureaucracy: to ensure the higher education regulatory system is truly proportionate, risk-based, transparent and accountable’.

The Public Sector Equality Duty

13. We have had regard to Schedule 1, paragraph 21 of HERA, which extends the Equality Act 2010, and therefore the Public Sector Equality Duty, to the OfS. This requires the OfS to have due regard to eliminating unlawful discrimination, foster good relations between different groups and take steps to advance equality of opportunity.
14. Through this consultation we are seeking views on any unintended consequences of our proposals, for example on particular types of provider or student. We are also seeking views about the potential impact of our proposals on individuals on the basis of their protected characteristics. Responses to this consultation will inform our assessment of the impact of our proposals on different groups.

Annex F: Section 2 of the Higher Education and Research Act 2017

2. General duties

(1) In performing its functions, the OfS must have regard to—

- a. the need to protect the institutional autonomy of English higher education providers,
- b. the need to promote quality, and greater choice and opportunities for students, in the provision of higher education by English higher education providers,
- c. the need to encourage competition between English higher education providers in connection with the provision of higher education where that competition is in the interests of students and employers, while also having regard to the benefits for students and employers resulting from collaboration between such providers,
- d. the need to promote value for money in the provision of higher education by English higher education providers,
- e. the need to promote equality of opportunity in connection with access to and participation in higher education provided by English higher education providers,
- f. the need to use the OfS's resources in an efficient, effective and economic way, and
- g. so far as relevant, the principles of best regulatory practice, including the principles that regulatory activities should be—
 - i. transparent, accountable, proportionate and consistent, and
 - ii. targeted only at cases in which action is needed.

(2) The reference in subsection (1)(b) to choice in the provision of higher education by English higher education providers includes choice amongst a diverse range of—

- a. types of provider,
- b. higher education courses, and
- c. means by which they are provided (for example, full-time or part-time study, distance learning or accelerated courses).

(3) In performing its functions, including its duties under subsection (1), the OfS must have regard to guidance given to it by the Secretary of State.

(4) In giving such guidance, the Secretary of State must have regard to the need to protect the institutional autonomy of English higher education providers.

(5) The guidance may, in particular, be framed by reference to particular courses of study but, whether or not the guidance is framed in that way, it must not relate to—

- a. particular parts of courses of study,
 - b. the content of such courses,
 - c. the manner in which they are taught, supervised or assessed,
 - d. the criteria for the selection, appointment or dismissal of academic staff, or how they are applied, or
 - e. the criteria for the admission of students, or how they are applied.
- (6) Guidance framed by reference to a particular course of study must not guide the OfS to perform a function in a way which prohibits or requires the provision of a particular course of study.
- (7) Guidance given by the Secretary of State to the OfS which relates to English higher education providers must apply to such providers generally or to a description of such providers.
- (8) In this Part, “the institutional autonomy of English higher education providers” means—
- a. the freedom of English higher education providers within the law to conduct their day to day management in an effective and competent way,
 - b. the freedom of English higher education providers—
 - i. to determine the content of particular courses and the manner in which they are taught, supervised and assessed,
 - ii. to determine the criteria for the selection, appointment and dismissal of academic staff and apply those criteria in particular cases, and
 - iii. to determine the criteria for the admission of students and apply those criteria in particular cases, and
 - c. the freedom within the law of academic staff at English higher education providers—
 - i. to question and test received wisdom, and
 - ii. to put forward new ideas and controversial or unpopular opinions,
- without placing themselves in jeopardy of losing their jobs or privileges they may have at the providers.



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